

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING
THE GENERAL WATER POLLUTION
CONTROL PERMIT FOR
CONCENTRATED ANIMAL
FEEDING OPERATIONS

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MOTION TO CONTINUE

COMES NOW Intervenor and Petitioner Dakota Rural Action, by and through their attorney of record, Kelsea K. Sutton of Johnson Pochop & Bartling, and requests a continuance of the contested case hearing scheduled for December 16, 2015. For the reasons set forth below, the motion to continue should be granted.

According to Mr. Nadenicek's November 25, 2015, letter to the parties of record in the above-entitled action: "[T]he South Dakota Bar requires anyone representing another, including an organization, be licensed to practice law in a proceeding such as this contested case hearing." Similarly, ¶ 3 of Secretary Pirner's Procedural and Scheduling Order requires: "All corporations, partnerships, associations, and other legal entities (including non-profit associations) must be represented by counsel to fully participate in the December 16, 2015, hearing." Thus, without an attorney to represent them, Dakota Rural Action would effectively be denied the right to intervene.

Dakota Rural Action submitted its Petition to Intervene on November 20, 2015. The organization received the Agency's letter and Secretary Pirner's Scheduling Order on November 25, 2015. Dakota Rural Action searched urgently and diligently for an attorney to represent them at the contested case hearing. Attorney Kelsea K. Sutton was retained on December 7, 2015. Ms. Sutton has an unavoidable prior conflict with the December 16, 2015, hearing date. Additionally, she needs ample time to properly prepare witnesses, research designated experts

and compile testimony. Less than ten (10) days is not sufficient time to prepare for a hearing that involves such complex and technical issues, and licensed legal counsel is required in order for Dakota Rural Action to participate in the hearing.

Dakota Rural Action is one of the largest conservation and environmental protection organization in the State of South Dakota. It is the only organization of its kind participating in these proceedings. Dakota Rural Action plans to present numerous substantive issues to the Board, many of which are complex and technical. Dakota Rural Action has, to date, the only rebuttal expert witness of any of the intervenors. The Organization is a major party to this proceeding, and the nature and substance of its testimony and evidence make them an indispensable party to the contested case hearing.

Without their attorney present at the hearing, Dakota Rural Action will not be able to cross examine witnesses, object to the admission of certain evidence or experts, or argue on behalf of the admissibility and relevance of its own evidence and experts. Thus, without their attorney, Dakota Rural Action would effectively be denied the right to intervene. Fairness would demand that Dakota Rural Action be given the same opportunity as the Agency, as well as the other intervenors, to present testimony and evidence, cross examine witnesses and contest or defend the admissibility and relevance of evidence and expert testimony. Due process demands the right to be heard at a meaningful time and in a meaningful manner, and the time strictures in this case, coupled with the inability of the Organization's attorney to attend the December 16th hearing, require a continuance to be granted.

Dated this 8th day of December 2015.

JOHNSON POCHOP & BARTLING



Kelsea K. Sutton
405 Main St. | PO Box 149
Gregory, SD 57533
(605) 835-8391
kelsea@rosebudlaw.com
Attorney for Dakota Rural Action

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December 2015, she served a copy of this **Motion to Continue** by U.S. First Class mail upon the following parties of record:

Joe Nadenicek

DENR Staff Attorney
PMB 2020
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3182
Joe.Nadenicek@state.sd.us

Ellie Bailey

DENR Feedlot Permit Program
1302 E. Highway 14, Suite 1
Pierre, SD 57501-8501
Ellie.Bailey@state.sd.us

Anthony Helland

1013 W. 20th St.
Sioux Falls, SD 57105
tony.helland@gmail.com

David & Lisa Nehring

27551 452nd Ave.
Parker, SD 57053
nehringd@crowne.edu

George Bogenschutz

46135 222nd St.
Nunda, SD 57050
mtnmach@itctel.com

Meghan Jarchow

2523 Princeton Ave.
Vermillion, SD 57069
meghann.jarchow@usd.edu

Roger & Ann Loeschke

48464 155th St.
Milbank, SD 57252
arloe@tnics.com

South Dakota Cattlemen's Ass'n

Wilkinson & Wilkinson

103 Joliet Ave., SE | PO Box 29
De Smet, SD 57231
todd@wslawfirm.net

South Dakota Dairy Producers
PO Box 31
Brookings, SD 57006
sddairyproducers@gmail.com

South Dakota Pork Producers Council
Donahoe Law Firm, P.C.
401 E. 8th St., Suite 215
Sioux Falls, SD 57103
brian@donahoelawfirm.com

William Powers
512 W. Main St.
White, SD 57276
wjp@swcp.com

Sonstegard Food Company
Donahoe Law Firm, P.C.
401 E. 8th St., Suite 215
Sioux Falls, SD 57103
brian@donahoelawfirm.com


Kelsea K. Sutton